

COLLIER COUNTY PARENTS SEEKING REFORM

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March 31, 2008

Dr. Dennis Thompson, Superintendent
Collier County Public Schools
5775 Osceola Trail
Naples, FL 34109-0919

Re: OCR Complaint # 04-07-1264

Dear Dr. Thompson:

In anticipation of an Office of Civil Rights (OCR) determination on the above-captioned Complaint # 04-07-1264, we hand-delivered to you a complete copy of the key evidentiary documents on March 20, 2008.

OCR has since completed the investigative aspect of our Complaint process, and found Collier County School Board (CCSB) to be in violation of CFR 34 104.36. Attached please find a copy of our March 28, 2008 correspondence to OCR Attorney Roger Mills, setting forth the OCR findings of fact, and the OCR resolution process options, as outlined by Attorney Mills.

This determination on behalf of attorneys for a Federal Government Agency was the direct result of an intentional and discriminatory legal strategy employed by School Board Attorney Richard Withers to not simply impede or delay, but to blatantly deny, the due process rights of two ESE Disabled Students, in violation of federal regulation. These two cases prove that this was not an isolated case, but an established and intentional "pattern of discrimination."

By any "Standard of Reasonableness", this should compel you to immediately dismiss Attorney Richard Withers, for cause, under the terms of his contract with CCSB. The investigation of his legal department, as recommended in our March 18, 2008 correspondence to you, is clearly no longer necessary, as the OCR independent and qualified investigation has now been concluded. These findings of fact are being presented to you by the Federal Government Agency responsible for the oversight and compliance with these very specific federal regulations.

As addressed with OCR Attorney Mills in the March 28, 2008 correspondence, we were surprised to learn that CCSB could, and had, refused to enter into negotiations with OCR to immediately implement corrective measures. This indicates both a refusal by the School District to acknowledge the violations of CFR 34 104.36, despite irrefutable documentary evidence, and OCR's independent and qualified findings of fact. This is

yet another example of the School District's intent to delay and deny both regulatory compliance and accountability, when it impacts the ESE Student population; an intentional "pattern of discrimination".

We acknowledged our concern that Attorney Withers was now attempting to abdicate his responsibility for these federal regulatory violations, as the School Board Attorney, although it was his intentional and discriminatory legal strategy that directly created the violations. He is deferring OCR communication and accountability to the same District administrators responsible for these areas of regulatory compliance (i.e., Victoria Sartorio, Dee Whinnery, and Larry Ruble), until they ultimately reach the School Board Attorney's desk, through the due process filings. While the administrators' may be found to be complicit in the pattern of discrimination (a subject of the recommended ESE Department audit), the Buck Stops Here with the School Board Attorney!

The School Board Attorney is clearly responsible to insure the due process proceedings are conducted in accordance with the federal regulatory guidelines, and to insure the children's procedural rights are respected and upheld throughout the process. As soon as a Request for Due Process is submitted to the School District, the legal burden shifts to the District to adhere to established regulatory guidelines in scheduling and conducting the hearings under federal mandate. Instead, as outlined in our March 18, 2008 correspondence to you, and as supported by the documentary evidence provided OCR investigators, Attorney Richard Withers:

1. Despite exhaustive and repeated demands, systematically impeded, denied and/or disregarded the ESE Student's ADA / Section 504 due process rights.
2. Despite attorney-filed Due Process Requests, Administrative Law Judge (ALJ) Motions to Compel, and ALJ Due Process Complaints, refused compliance with ADA/504 federal regulatory guidelines for Section 504 Due Process Grievances and Hearings.
3. Intentionally manipulated and disregarded federal mandates under IDEA as the very mechanism to impede and deny and/or disregard the ESE Student's procedural rights under ADA / Section 504.
4. Implemented a legal strategy, with malice and forethought, to conspire and retaliate against the ESE Students and their families for exercising their rights under IDEA, ADA, and Section 504.

We firmly believe that CCSB's decision to refuse negotiations with OCR, when found in violation of federal regulations, should come directly from your office, as the Superintendent of Schools, and the School Board level. As just reported in a March 27, 2008 Naples Daily News article by Katherine Lewis entitled "Collier School District Works to Save Accreditation", SACS strongly recommended "the School Board work on its' governance and leadership standards". We're confident that should you defer this matter to SACS, they would agree this would include demonstrated "governance and leadership" when it is determined the School District has allowed its' School Board Attorney to intentionally violate federal regulations in the denial of due process rights to its' ESE Disabled Student population. Further, when brought to CCSB's direct attention in the public and recorded School Board Meeting on April 19, 2007 by the Complainants

in the OCR Discrimination Complaints, CCSB ignored the appeal to intervene, investigate, and cease the intentional discrimination orchestrated by School Board Attorney Withers. When you question them, the School Board members should be ashamed to acknowledge these included impassioned back-to-back pleas by:

- Former CCSB student, [REDACTED], the Case 2 Summary in the OCR Discrimination Complaint, begging the School Board to intervene, and force Attorney Withers to allow him back in school after his “constructive eviction” through the denial of his federal rights.
- William Hughes, parent of [REDACTED] (a non-verbal CCSB ESE Student with Autism & Epilepsy who had to speak through his father), as the Case 1 Summary in the OCR Discrimination Complaint. Mr. Hughes challenged the School Board in accepting Attorney Wither's public assertion that the children's Due Process Hearing rights were “frivolous”, as Attorney Wither's requested an increased Legal Department budget to “Dig In His Heels and Duke It Out” with the ESE parents (his self-described School District policy, as reported in the Naples Daily News).

In addition to reviewing the School Board video recording, you may wish to also read Brent Batten's related Naples Daily News column on April 23, 2007 entitled “School Board Treatment of Parents a Crying Shame”.

Upon review of all of the above-referenced documentation, we strongly urge, based on the OCR Complaint determination, and the evidentiary documents supporting it, that you and the School Board, as necessary, initiate the following immediate corrective measures:

1. The immediate dismissal of School Board Attorney Withers, for cause, as herein outlined, and as supported in the evidentiary documents submitted to OCR investigators.
2. Proceed with the execution of the agreement to negotiate with OCR to implement corrective measures, to insure federal regulatory compliance and accountability at the very earliest date, for the protection and benefit of the ESE children within your care, custody, and control.
3. Initiate the Hinshaw & Culbertson recommended ESE Department audit to ascertain federal compliance with the delivery of FAPE and Procedural Rights under IDEA, Section 504, and ADA. Determine those CCSB administrators and employees who have been complicit in the established pattern of discrimination. Orchestrating the denial of these student's federally-protected rights, Attorney Withers was not acting alone in the systematic denial of FAPE and Procedural Rights. A pattern of intimidation, retaliation, and coercion will be identified and substantiated through this initiative, in support of which we can contribute substantial evidentiary documents. A comprehensive review of the two children's trial transcripts and exhibits contains much of the evidence.

We would appreciate the courtesy of a written response to these requests on or before Friday, April 4th, to include an established plan of action and time frame on behalf of your office and the School Board, as necessary.

While we have demonstrated our desire to communicate and cooperate with CCSB in implementing corrective measures, we can do so only in a reciprocal relationship. These issues are far too important to the District's ESE Students to allow them to further languish.

In rendering your decisions, you may wish to defer to Brent Batten's Naples Daily News article of March 30th entitled "Bad Tips for Better School Board management".

Respectfully Submitted,

Ms. Patty Caldwell Portenier, as Representative for OCR Discrimination Complaints against FDOE and DOAH and Co-founder of Collier-ESE-Reform

Mr. William Hughes, as Parent Advocate, Representative for OCR Discrimination Complaint against CCSB and Co-founder of Collier-ESE-Reform

Ms. Catherine Cannivet, as Parent Advocate and Co-founder of Collier-ESE-Reform

Cc by Email: OCR Attorney Roger Mills
CCSB Chair Linda Abbott
CCSB Vice Chair Patricia Carroll
CCSB Member Kathleen Curatolo
CCSB Member Steven Donovan
CCSB Member Richard Calabrese

Cc by Email: CCSB Administrator Victoria Sartorio
CCSB Administrator Dee Whinnery
CCSB Administrator Larry Ruble

Please direct written correspondence to:
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